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DISABILITY AND DEATH COMPENSATION FOR RAILROAD EMPLOYEES

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Compensation is comparatively a new question with us. Six years ago it did not receive a second thought from the Brotherhood of Railroad Trainmen, the largest railroad organization in this country, when the statement was made to it that industry must be made to pay for its human wreckage. It was accepted as so much agreeable expression calculated to please the audience. Yet in six years this subject has been so thoroughly discussed, its merits so well explained and the justice of the demand become so apparent as to be thus expressed: "Compensation to the injured workman is a legitimate charge against the cost of manufacture, and the victim of an industrial accident, or his dependents, should receive compensation, not as an act of grace on the part of the employer, but as a right."

War is regarded as the most dangerous pastime at which men can play, but when the hazards of industry are compared with it the soldier appears to be a preferred insurance risk aside from a general engagement, and the army the only really safe place for a man to be.

This is a common comparison, but so well has it served its purpose that public opinion is concentrated in a demand that the terrible loss of life and limb be compensated for and ended as far as possible by the intelligent and reasonable use of safety appliances. The time limit now set upon the operations of the employees stands in the way of securing any advantage from protecting devices provided for them. The devices fail in their purpose when the high speed required of the worker prevents their effective application.

The enforced payment for injury and death will lead the employer a long way out of the beaten path of unconcern for his employee and force the adoption of better safety appliances, with time to use them without loss of wages or position. The rule of

industry is performance and product first, safety if there is time for it. Until the responsibility of the employer is fixed and the certainty of compensation is established there will not be less of death and disability incident to industrial operation.

What may be regarded as a serious set-back to the law of enforced compensation is the recent decision of the New York court against the law of that state. The constitutional guaranty to protect property rights under all conditions is construed to mean that, until the constitution is changed the order of things must be liability and fight rather than compensation and settlement. It holds that no man can be deprived of his property without due process of law, but it means that the same property holder can continue to maim and kill his employees without regard to due process of law. But it is a dangerous game for the employers to play at. Legislation and court decision must conform to public desire and the longer the death and disability record stands unpaid, the more exacting liability and compensation laws will become. They will finally force the employer to seek settlement for they will be based on the fact instead of the fault of accident. Legislation may be delayed but there is nothing under heaven that can stop it.

Lack of accurate statistics forces us to accept the estimates, that vary from five hundred thousand to two millions of killed and wounded a year as the toll levied in the name of industry. It is very clear that the enormous loss in human life, limb and energy has never been humanely regarded for the reason that there are always men ready to step into the vacant places, and further because the injured and the families of the killed have, in a sort of way, accepted their mental and physical wounds as a part of the day's work and made the best of them without any great outcry against the unfairness of business that compensates for everything except human life and human misery.

I am going to tell you of a class of employees that are, in a way, pretty well known to all of you, that is, you know them as you see them, usually on passenger trains and occasionally in the yards and on freight trains. I know that you will agree with me in saying that they are an unusually intelligent class of men but even at that you do not do them justice. You may not know that these men are the pick of America's workmen, that each

one of them has had to pass a physical and mental examination more exacting in some respects than is required for admission to the army or the navy; they must be young, physically perfect and show a fitness for the work or they are not retained in the service. Only young men are employed, the physically and mentally alert, ready to act on the emergency with sound judgment, for railroad work does not admit mistakes. They usually mean disaster and death and the penalty must be paid.

Nine of these railroad men daily go down to death following their occupation and one is killed or injured every seven minutes year after year. The last report of the Interstate Commerce Commission shows that 3,383 employees were killed and 68,618 were injured for the year in which it was made. The record of injury does not give much information as to the final results of the casualties. The extent of partial or total disability is not known, but we can take the insurance payments of the five railroad organizations as a fair index of the number of total disabilities that resulted. They pay certain amounts for total and permanent disability, that is, for such disablements only as prevent the injured from performing the work at which he was engaged at the time of his injury. Minor injuries are not included in their records.

The records of the Brotherhood of Railroad Trainmen show 16.4 claims paid per thousand insured; the Order of Railway Conductors pays 12 claims per thousand insured; the Brotherhood of Locomotive Engineers pays 8 claims per thousand insured; the Brotherhood of Locomotive Firemen pays 7 claims per thousand insured, and the Switchmen's Union pays 15.5 claims per thousand insured. And two-thirds of these claims are for accident. The working life of a brakeman is estimated at only seven years and the average of our conductors, brakemen and switchmen killed and totally disabled is 32. There is a long period judged from life expectancy unprovided for.

What do the railways pay? No one knows; but it is reasonable to say that not more than 10 per cent of injuries and deaths are compensated and the average amount paid is low.

The question may be asked, why is it with the adoption of safety devices on railways the casualty rate remains about stationary, for that is the fact, as reference to government reports

will show. 1909 did show a falling off in casualties but the report is for half of 1908 when business was poor, fewer men at work and the hazards thereof comparatively diminished.

Safety appliances reduce the number of casualties of some kinds, but where they save life and limb in one way they take it in another. Without safety devices it was impossible to handle equipment as it is now handled; cars were by no means as large, distances between tracks were greater, trains were shorter and lighter, the train and yard men were on their guard against sudden stops and starts, and in many other ways the hurry-up practices of to-day were not possible with the link and pin coupler and hand brake.

Train capacity in twenty years has been increased five-fold to say the least, cars and engines are equipped with automatic couplers and air brakes, built to take care of themselves and by their own strength do so, but unfortunately automatic equipment is not always automatic, it needs adjustment; distances between yard tracks particularly are so short that it often happens a man cannot stand between them when they are occupied; it is an easy matter to get caught between tracks, knocked from ladders or fall between cars in going over the top of the train. Trains are longer, frequently a mile of cars, and communication in many instances is out of the question between men on the same train, which adds to the dangers of the work; the sudden application of the air from any cause is likely to unbalance the man on the car and throw him off, usually with serious injury.

You have been informed of the rules in vogue on every railroad that are intended for the protection of the employees and you doubtless feel, after reviewing the casualty records, that railway men are a careless lot, with little regard for their lives or limbs, that they will not obey the rules established for their safety, in short, that they court injury and death, the only apparent reason being that of disturbing their employers and mussing up the right of way with their remains. The railway employee is careless, just as you are in crossing a busy street in the face of motor and street cars, but be generous enough to credit the railway employee with the same reluctance to undergo bodily pain as yourself; the fact that he works for a railroad company does not make him insensible to physical or mental anguish. You very naturally

ask, if this is true, why, then, does he not observe the safety rules adopted for his protection? The answer is a short one; he does not have the time.

I would like to take a few of you, who believe the rules of the railways purporting to protect their employees from injury and death are meant to be obeyed, one trip on local freight on any eastern railway, or set you down with a switch crew in any large yard, and if these experiences did not satisfy you that the rules were made for the purpose of protecting the railway companies against personal injury suits, I would like to have you investigate a hump, or gravity, yard, where you could readily note the opportunity given the man carefully to examine all cars, equipment, appliances, tracks and other things too numerous to mention, that he is admonished by the rules carefully to look into before he works on a car, and note how much time he has to do all of this. The man catches his "cut" on the run and if he fails to catch it, his job is gone.

On the road there is no time to examine cars, appliances or anything else. The first thing to examine is the schedule to see how much time there is to do the work and keep out of the way. When freight trains have cars to set out at stations and the car has to be placed on the opposite side of the roadway it requires that the train be flagged in both directions; this takes the two brakemen. The conductor handles the train in making the switch, cuts and rides the car into clear or places it with the engine as the case may be, looks after the train as it recrosses to its own tracks, sets up the switches both ways, backs down and couples up his air and gets ready to go. Now can you imagine a conductor or a brakeman taking the time to inspect the train, the appliances, roadway and switches before he sets out that car, and making time over the road? A moment's thought will convince you that it not only cannot be done, but it is not expected it will be done. It merely shows the purpose back of the rule, that is, to protect the company against injury to the man.

The man following the switch engine is another who is condemned for his recklessness, and he is reckless—why if you go down to the yards you will see that reckless car hand run after a cut of cars, swing on at the peril of his life, climb on top and set brakes without the least regard for his safety. You might also

note that he did not examine the safety appliances, the right of way and the other things he is supposed to look into carefully before he takes hold. Do you suppose he is doing all these dangerous acts for his own pleasure or for the simple sake of giving his employer heart failure? You know that he placed his life in peril. He will tell you that if he had not taken these risks his job would have been in peril, and he needs that job.

Right here to illustrate what I mean I quote from the *Evening Bulletin*, of Philadelphia, Pa., for March 17:

"Coroner Ford said at the close of an inquest to-day that he would hold any railroad conductor on the charge of criminal negligence when a man was killed by shifting cars if the conductor had not a flagman protecting the train.

"It is the rule of all railroads that flagmen must run in front of the cars, shouting a warning, when they are shunted upon a track. Because of the disobedience of the rule, it is said, Harry J. Baker, a brakeman of the Pennsylvania Railroad, recently was killed at Forty-fourth and Thompson Streets.

"He was repairing a coupling on a car when several cars were shifted and crushed him. Edwin M. Freer, the conductor, said that the cars were not protected by a flagman because they were being shifted on a storage track.

"Coroner Ford said that Freer's action bordered on criminal negligence. A verdict of death by accidental injuries was given."

This switchman was adjusting an imperfect device. He was between cars and did not have the track flagged on which he was at work. Why did he not take the safety precautions demanded by the rules of his company? Why did the crew that placed cars against the ones on which he was at work not look over the track to see if there were anyone between cars? For two very good reasons, there are not enough men employed to do it, it never has been done, was never expected to be done, and never will be done, until the employer is forced to pay for disability and death.

Several years ago one of the train and engine crews employed on the Reading headed into a side track to meet a number of trains and fell asleep from exhaustion. They failed to notice the number of trains that passed, pulled out between sections of the train they were to meet and pass, with the result that a number of persons were killed, when they collided with the train for which they had

not waited. The engineer was sentenced to a term of years for manslaughter and the court said in substance that if men were tired out and unfit to continue their work, they should quit, rather than take the chance of doing injury, but the jurist did not mention the important fact that there is a law in Pennsylvania that forbids the leaving of a train between terminals, and overlooked the injustice of advising the men to quit if they were exhausted. The men had to live, and they had to work to live, a simple matter the jurist failed to remember.

You have another case, that of a Pennsylvania railway employee who obeyed the orders of his conductor, attempted to couple two cars that were not equipped according to law and who was killed as the court said, "because of his neglect." The jurists for your state declared that Adam Schlemmer, the brakeman in this case, ought to have kept his head out of the way, but unfortunately he could not. The coupling had to be made between a caboose and a steam shovel car, not equipped with the automatic coupler. Schlemmer had to get down under the cars, hold his lantern, and guide the heavy draw bar into the opening of the coupler on the caboose. Schlemmer looked up to see if he were placing the draw bar properly; if he had not, he would have been killed, and in raising his head to look, raised it a trifle too high and lost it. Even a jurist who has a record for fairness said, that as Schlemmer was twice warned not to raise his head, and to be careful, so, therefore, he was negligent when he did so. I would like to take that stern dispenser of impartial justice down into one of these railroad yards to-night, hand him a lantern and put him under two freight cars to couple under similar conditions and if he lived to tell the story, I venture to say, that there would be one justice who would regard the law of negligence in a new light.

The man was told to be careful, the law said that cars must be equipped with devices that would couple by impact and the Pennsylvania railway company referred to its warnings of the use of appliances and declared Schlemmer was negligent because he had to look to see what he was doing or be killed.

A fair court would have said in a few words, the man was trapped to his death because of the negligence of the railroad company and it will pay for it. The case of Adam Schlemmer still drags its weary way through the courts.

The law protecting the employer in his property rights is supreme except under unusual conditions; human right is still a matter for protection.

The efficiency of the safety device is greatly exaggerated. It is difficult for one not familiar with the service to realize that the safety device has not served wholly the purpose for which it was intended because other conditions that have come along with it have minimized its efficiency.

To illustrate I refer to the number of brakemen and switchmen who have their feet and legs crushed coupling cars. How can a man couple cars with his feet, is a natural inquiry. He does not, but he finds a coupler out of adjustment, it is impossible to move it with his hands, he braces himself, puts his foot against it to shove it in place and fails to get his foot out before the cars come together. This plainly is contrary to rule, common sense and everything else that can be charged against the employee, then, why does he take such chances? The freight brakeman runs over the top of a fast moving train, the law says he does not have to do it; he hangs far out of the caboose window to look for hot boxes or mounts a car being switched to a side track and is in danger of striking an obstruction; he runs alongside of a moving car trying to adjust a coupler, his employer has rules forbidding carelessness; you may see him pole a car, contrary to rule, which tells him to use a drag rope, but if this rule is to be obeyed, why is the push pole placed on the engine? Every dangerous performance is contrary to safety rules made and provided for his benefit. Why is he so reckless? He has to be, if he wants to hold his job. He is not a car inspector, nor a track walker, and if he should attempt to follow the rules laid down for his safety he would lose his job because he would be too slow for the business. All of the elaborate safety rules read well but it is not expected the employee will observe them. They are signed by him when he goes to work and are used as the legal defense of his employer if he gets killed or injured. It is difficult for accident to befall him under the rules without his being guilty of their violation in some way or another. The rules go to the public which condemns the carelessness of the man, but the unwritten order goes to the employee to keep traffic moving at all hazards and it is the latter order that he obeys. If all the rules for safe train operation were enforced there would not

be any "limiteds"; congested traffic would settle them beyond the shadow of a doubt.

But it is the killed and injured with which we have to deal in the hope of inspiring public demand for relief. As the casualty rate stands, each seventeen years means the death or disability of the entire number of men now on the rolls. It means that, inside of approximately twenty years, more than a million and a half men will be killed or injured in railway service.

The number bulks so large it is not easy to realize what it means; it is difficult to understand that close to seventy thousand persons now contribute their lives and limbs to this one industry annually, and the number is growing. These accidents and deaths pass unnoticed, because they happen one at a time and are scattered over a great expanse of territory; but suppose any one of our cities of like population were to suffer an equal number of casualties in one year, do you suppose we could realize what it would mean?

But here are these men, the flower of American manhood, contributing the best service and giving their lives to its defense without assurance of compensation in the event of injury or death. They give their best, accept the hazards and know they must fight for every dollar they receive in the event of death or disability.

They realize that the company will fight them unfairly from the time they are injured until they are driven out of sight and hearing by personal release or court decision. The companies do not fight fairly, they do not give the man an even chance for his defense, but are after his release before he recovers from the anaesthetic in the hospital; they hound him in his delirium; they haunt him with demands for adjustment under pretense of benefiting him or his family. The ambulance chaser is damned in good legal society but he is an angel of goodness and purity compared to the railway claim agent. The injured employee is at every disadvantage. He knows that he cannot depend upon his associates to testify in his behalf if he brings suit, for it means the job of the man who bears witness against his employer. In the case of *West vs. C. B. & Q. Voluntary Relief*, Judge Baker, of Chicago, recognized this truth. He said:

"Six witnesses, mainly farmers, residing near this highway crossing, testified that the tell-tales were not put up until after

West was struck. The bridge crew and section men, fourteen in all, testified that the tell-tales were restored the second day before the injury. Furthermore, the records of the work done by the bridge crew and telegraph messages sent over the company's wires from the bridge boss to his superintendent telling the daily whereabouts of the crew, were introduced. These corroborated the men's testimony. Thereon counsel for the company insist that the evidence of the plaintiff was so slight in comparison with that of the company that the court was justified in directing the verdict. The records and messages were at all times in the custody of the company's men, who would naturally have an interest in freeing themselves and the company from blame. And while there was no direct attempt to impeach the company's men and records, the ultimate fact was squarely contradicted by the positive and circumstantial testimony of apparently disinterested men, whose reputation for truthfulness was unassailed."

I know of one instance where an injured switchman carried a broken hand-hold to the hospital with him and did not let go of it until they took it away from him. These are a few of the difficulties the men know they must face if they attempt to recover for injury or death. A private settlement usually means little. I was recently informed that one of the roads entering this city averaged less than \$700 for its private settlements and less than \$1,200 for settlements, all costs included, made in the courts. Another road pays \$1,000, the amount contracted for by its relief department, which the employee usually takes in desperation, because he knows what litigation means for him.

With the railway death and disability lists accurately fixed we still are in doubt as to the number of cases that have a chance for recovery through the courts. The common law is against the employee unless he can establish the fault of the employer; the statutes have been modified in certain respects in some of the states but the opportunity for recovery is slight compared with the number of casualties. Germany offers the only statistics of responsibility for death and disability arising out of employment. The figures for 1897 show 17.30 per cent the fault of the employer; 29.74 per cent as the fault of the employee; of both 4.83 per cent; 5.31 per cent were due to fellow servant or other person; 41.55 unavoidable accidents for which no one was responsible; 1.27 per cent

attributed to the act of God. A review of these figures will assure one just what a slight chance the workmen in the United States have for recovery under present laws, which leave the burden of accident and death just where it falls, resting upon the fault rather than upon the fact of accident.

The proposition before us is to set aside this inhuman doctrine and substitute a new doctrine of the killed and wounded, which will get away from the law of liability and take up the law of compensation for the purpose of assuring definite payments for all accidents arising out of employment which are not caused by the wilful fault of the employee.

To-day it is cheaper to kill men than to protect them; it is less costly to fight them in the courts than to deal fairly with them and their families; the disposition has not been to adopt the more humane doctrine of placing the burden where it belongs, that is, upon the industry responsible for it and the outcome is a demand for compensation that will shift the burden.

Court delay frequently takes the advantage from a favorable decision, for trials, appeals, re-trials and delays on every disputed ground place the disabled workman at a serious disadvantage.

There is some danger that in the hurry to make up for lost time and in copying certain established systems abroad American legislators will overlook some of the most important features of the plans that have been tried out abroad. This tendency shows itself in several proposed laws in the form of compensation for a given period only, which if adopted will merely postpone the period between injury, compensation, its use and finally a falling back upon charity as we now have it. If all the proposed compensation laws were immediately enacted and in operation, after a period of six years the surviving pensioners would be exactly where they are to-day, that is, injured beyond the ability to earn a living, their monthly and annual payments ended and they left without further means of support.

We might very safely start our compensation plans by giving the totally and permanently disabled employee a fair proportion of his earnings for the remainder of his life, instead of cutting him off with a maximum payment of \$3,000, at best divided over a period of six years as the majority of the plans now contemplate.

In the desire to get away from the courts and the lawyers there is danger that we may also get rather far away from the main purpose in view, which ought to be the assumption by the employer of the burden of living for those who have become wrecked contributing their share toward industry.

Compensation legislation ought to include free hospital service. In certain of our large cities ambulance owners, hospitals and undertakers to-day fight each other for business while the man dies. The day for these inhuman practices, we hope, is drawing to a close; that soon it will be recognized that the workman is not only worthy of his hire, but that he will no longer be asked to assume the burden of disability and death incurred in the service of his employer.

We believe we are both right and consistent when we say in summing up the question that every human sacrifice must be fully compensated, without having to wait for the delays and uncertainties of the courts; we want the injured not to have to suffer mental pain with his physical ills for fear of the future of himself and family; we demand medical, surgical and hospital attention; we want certainty of responsibility fixed for the employer, with certainty of compensation fixed for the employee; we want the injured employee and his family to remain just as useful members of society as they were before the industrial sacrifice was made! We want the defenses of negligence and assumption of risk eliminated, and the professional risks made to rest upon the profession, not upon the injured employee, so that liability will not offer its present invitation to fight, and so that compensation will be acceptable to both parties. This is, I believe, the only way we can enforce compensation.